

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

August 11, 2004

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Appeal*

Name of Case: Worker Appeal

Date of Filing: April 26, 2004

Case No.: TIA-0088

XXXXXXXXXX (the Applicant) applied to the Department of Energy (DOE) Office of Worker Advocacy (OWA) for assistance in filing for state workers' compensation benefits. The Applicant worked as an electrician for DOE contractors at a DOE facility. An independent physician panel (the Physician Panel or the Panel) found that the Applicant had two illnesses that were the result of exposure to toxic substances at a DOE facility, and a third illness that was not. The OWA accepted the Panel's determination, and the Applicant's surviving spouse filed an appeal with the DOE's Office of Hearings and Appeals (OHA). As explained below, we have concluded that the appeal should be denied.

*I. Background*

A. The Energy Employees Occupational Illness Compensation Program Act

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the Act) concerns workers involved in various ways with the nation's atomic weapons program. *See* 42 U.S.C. §§ 7384, 7385. The Act provides for two programs, one of which is administered by the DOE.<sup>1</sup>

The DOE program is intended to aid DOE contractor employees in obtaining workers' compensation benefits under state law. Under the DOE program, an independent physician panel assesses whether a claimed illness or death arose out of and in the course of the worker's employment, and exposure to a toxic substance, at a DOE facility. 42 U.S.C. § 7385o(d)(3). In general, if a physician panel issues a determination favorable to the employee, the DOE instructs the DOE contractor not to contest a claim for state workers' compensation benefits unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs if it contests the claim. 42 U.S.C. § 7385o(e)(3). As the foregoing indicates, the DOE program itself does not provide any monetary or medical benefits.

---

<sup>1</sup> The Department of Labor administers the other program. *See* 20 C.F.R. Part 30; [www.dol.gov/esa](http://www.dol.gov/esa).

To implement the program, the DOE has issued regulations, which are referred to as the Physician Panel Rule. 10 C.F.R. Part 852. The OWA is responsible for this program and has a web site that provides extensive information concerning the program.<sup>2</sup>

## B. Procedural Background

The Applicant was employed as an electrician at a DOE facility for nearly thirty years, from 1970 to 1999. He filed an application with OWA, requesting physician panel review of three illnesses, asbestosis, small cell carcinoma, and melanoma. The Applicant claimed exposure to radiation and toxic materials, including asbestos, beryllium, lead, mercury, zinc, heavy metals, silica, and various solvents and solutions.

The Physician Panel rendered a determination on each of the three claimed illnesses. The Panel rendered positive determinations for asbestosis and small cell carcinoma, meaning that it concluded that exposure to a toxic substance at a DOE site was a significant factor in aggravating, contributing to or causing those illnesses. The Panel rendered a negative determination for melanoma. Although the records in the file clearly indicate that the Applicant suffered from a melanoma in his right eye, the Panel stated that there was insufficient scientific evidence that his work exposures caused, aggravated or contributed to the condition.

The OWA accepted the Physician Panel's determinations: the positive determinations for asbestosis and small cell carcinoma, as well as the negative determination for melanoma. *See* OWA March 25, 2004 Letter. The Applicant's surviving spouse filed the instant appeal. In her appeal, she stated that she does not accept the negative determination regarding her husband's melanoma, and requests that a more thorough investigation be made. She further stated that as an electrician, the Applicant worked in nearly every location at the facility, and that he developed problems with his lungs as early as 1978.

## II. Analysis

Under the Physician Panel Rule, independent physicians render an opinion whether a claimed illness is related to a toxic exposure during employment at DOE. The Rule requires that the Panel address each claimed illness, make a finding whether that illness was related to a toxic exposure at DOE, and state the basis for that finding. 10 C.F.R. § 852.12.

We have not hesitated to remand an application where the Panel report did not address all the claimed illnesses,<sup>3</sup> applied the wrong standard,<sup>4</sup> or failed to explain the basis for its

---

<sup>2</sup> See [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy).

<sup>3</sup> *Worker Appeal*, Case No. TIA-0030, 28 DOE ¶ 80,310 (2003).

<sup>4</sup> *Worker Appeal*, Case No. TIA-0032, 28 DOE ¶ 80,322 (2004).

determination.<sup>5</sup> On the other hand, mere disagreements with the Panel's opinion are not a basis for finding Panel error.<sup>6</sup>

In this case, the arguments raised in the appeal—that the Applicant worked throughout the facility and had lung problems for more than 20 years—are not bases for finding Panel error. The Physician Panel addressed each claimed illness, made a determination for each, and explained the basis for each determination. The arguments raised in the appeal are merely disagreements with the Panel's medical judgment regarding the cause of the Applicant's melanoma, rather than indications of Panel error. Accordingly, the appeal does not provide a basis for finding Panel error and, therefore, should be denied.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy Case No. TIA-0088 be, and hereby is, denied.
- (2) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: August 11, 2004

---

<sup>5</sup> *Id.*

<sup>6</sup> *Worker Appeal*, Case No. TIA-0066, 28 DOE ¶ 80,\_\_\_\_ (July 9, 2004).